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Agenda item 18

Election of judges of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Memorandum by the Secretary-General

I. Introduction

1. By its resolution 955 (1994) of 8 November 1994, the Security Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994, and to that end to adopt the Statute of the International Tribunal for Rwanda annexed thereto.

2. By its resolution 1431 (2002) of 14 August 2002, the Security Council decided to establish a pool of ad litem judges in the International Tribunal for Rwanda. To that end, it decided to amend articles 11, 12 and 13 of the Statute of the International Tribunal for Rwanda and to replace those articles with the provisions set out in annex I to that resolution. The Security Council also requested the Secretary-General to make practical arrangements for the election, as soon as possible, of 18 ad litem judges in accordance with article 12 ter of the Statute of the International Tribunal for Rwanda, as so amended.

3. Pursuant to what is now article 12 ter, paragraph 1 (a), of the Statute of the International Tribunal for Rwanda, following the amendments that were introduced by the Security Council in resolution 1431 (2002), the Legal Counsel, on behalf of the Secretary-General, invited, by circular letter of 3 January 2003, all States Members of the United Nations and non-member States maintaining permanent

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observer missions at United Nations Headquarters to submit their nominations for ad litem judges of the International Tribunal for Rwanda. In accordance with article 12 ter, paragraph 1 (b), of the Statute, as so amended, each State was invited to nominate, within 60 days of the date of the invitation, up to four candidates. The Legal Counsel informed States that, should they decide to nominate two or more candidates, they would be at liberty, should they wish to do so, to nominate candidates who were of the same nationality as each other. He also informed them that they were at liberty, should they wish to do so, to nominate a candidate or candidates who were of the same nationality as a permanent judge of the International Tribunal for Rwanda. He further advised them that, should they decide to nominate a candidate or candidates, then, in accordance with paragraph 1 (b) of article 12 ter of the Statute of the International Tribunal for Rwanda, they should take into account the importance of a fair representation of female and male candidates.

4. The 26 nominations received by the Secretary-General within the period stipulated in subparagraph 1 (b) of article 12 ter of the Statute of the International Tribunal for Rwanda, as amended by Security Council resolution 1431 (2002) of 14 August 2002, were forwarded by the Secretary-General to the President of the Security Council, in accordance with subparagraph 1 (c) of article 12 ter, as so amended, by means of a letter dated 6 March 2003 (S/2003/290). In that letter, the Secretary-General noted that the number of candidates whose nominations had been received was short of the minimum number of candidates who, in accordance with subparagraph 1 (c) of article 12 ter of the Statute, as amended, were to make up the list which the Security Council was to establish for transmission to the General Assembly. In the light of that information, the Council, at its 4731st meeting, on 28 March 2003, decided to extend the deadline for nominations until 15 April 2003. The President of the Council informed the Secretary-General of that decision by means of a letter dated 28 March 2003 (S/2003/382).

5. The 35 nominations received within the period stipulated in subparagraph 1 (b) of article 12 ter of the Statute of the International Tribunal for Rwanda, as extended by the Security Council in the decision taken at its 4731st meeting on 28 March 2003, were forwarded by the Secretary-General to the President of the Security Council, in accordance with subparagraph 1 (c) of article 12 ter, by means of a letter dated 21 April 2003 (S/2003/467). At its 4745th meeting, on 23 April 2003, the Security Council, in accordance with paragraph 1 (c) of article 12 ter of the Statute of the International Tribunal for Rwanda, established a list of 35 candidates for transmittal to the General Assembly. The list was adopted by the Council in its resolution 1477 (2003) of 29 April 2003 and was formally conveyed to the President of the General Assembly by means of a letter dated 29 April 2003 from the President of the Security Council (A/57/800).

6. The list of candidates for ad litem judges and the procedure for the election of the ad litem judges of the International Tribunal for Rwanda are set out below. The curricula vitae of the candidates will be transmitted to the General Assembly in a separate document (A/57/802).

II. List of candidates for ad litem judges of the International Tribunal for Rwanda

7. The list of candidates for ad litem judges of the International Tribunal for Rwanda is as follows:

Ms. Achta Saker Abdoul (Chad)
Mr. Aydin Sefa Akay (Turkey)
Ms. Florence Rita Arrey (Cameroon)
Mr. Abdoulaye Barry (Burkina Faso)
Mr. Miguel Antonio Bernal (Panama)
Ms. Solomy Balungi Bossa (Uganda)
Mr. Robert Fremr (Czech Republic)
Mr. Silvio Guerra Morales (Panama)
Ms. Taghreed Hikmat (Jordan)
Ms. Karin Hökborg (Sweden)
Mr. Vagn Joensen (Denmark)
Mr. Gberdao Gustave Kam (Burkina Faso)
Mr. Joseph-Médard Kaba Kashala Katuala (Democratic Republic of the Congo)
Ms. Engera A. Kileo (United Republic of Tanzania)
Ms. Nathalia P. Kimaro (United Republic of Tanzania)
Ms. Agnieszka Klonowiecka-Milart (Poland)
Ms. Flavia Lattanzi (Italy)
Mr. Kenneth Machin (United Kingdom)
Mr. Joseph Edward Chiondo Masanche (United Republic of Tanzania)
Mr. Patrick Matibini (Republic of Zambia)
Mr. Edouard Ngarta Mbaïouroum (Chad)
Mr. Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo)
Mr. Tan Sri Dato 'Hj. Mohd. Azmi Dato 'Hj. Kamaruddin (Malaysia)
Mr. Lee Gacuiga Muthoga (Kenya)
Mr. Laurent Ngaoundi (Chad)
Ms. Beradingar Ngonyame (Chad)
Mr. Daniel David Ntanda Nsereko (Uganda)
Mr. Seon Ki Park (Republic of Korea)
Ms. Tatiana Răducanu (Republic of Moldova)
Mr. Mparany Mamy Richard Rajohnson (Madagascar)
Mr. Edward Mukandara K. Rutakangwa (United Republic of Tanzania)
Mr. Emile Francis Short (Ghana)
Mr. Albertus Henricus Joannes Swart (Netherlands)
Mr. Xenofon Ulianovschi (Republic of Moldova)
Ms. Aura Emérita Guerra de Villalaz (Panama)

III. Procedure for the election of ad litem judges

8. The election of ad litem judges will be held in accordance with the following provisions:

(a) Article 12 and article 12 ter of the Statute of the International Tribunal for Rwanda, as amended by the Security Council in its resolution 1431 (2002) of 14 August 2002;

(b) Given the similar nature of the election of judges of the International Court of Justice and the election of judges of the International Tribunal for Rwanda, it was decided at the time of the previous elections of judges in 1995, 1998, 2001 and 2003 to follow similar election procedures in the General Assembly. The Secretary-General suggests that these precedents be followed and that rule 151 of the rules of procedure of the General Assembly be applied to the election of ad litem judges of the International Tribunal.

9. In accordance with article 12 ter, paragraph 1 (d), of the Statute of the International Tribunal for Rwanda, as amended by the Security Council in its resolution 1431 (2002) of 14 August 2002, the Holy See, being a non-member State that maintains a permanent observer mission at United Nations Headquarters, will participate in the election in the same manner as the States Members of the United Nations.

10. On the date of the election, the General Assembly will elect 18 ad litem judges from the list of candidates submitted to it by the Security Council.

11. According to article 12 of the Statute of the International Tribunal for Rwanda, as amended, ad litem judges of the Tribunal shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. According to the same provision, due account shall be taken in the overall composition of the Chambers and sections of the Trial Chambers of the International Tribunal for Rwanda of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

12. In accordance with paragraph 1 (d) of article 12 ter of the Statute of the International Tribunal for Rwanda, as amended, the candidates who receive an absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

13. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors in the General Assembly for current purposes are all 191 Member States, together with the non-member State mentioned in paragraph 9 above. Accordingly, 97 votes constitute an absolute majority in the Assembly for the purpose of the present election.

14. Only those candidates whose names appear on the ballot papers are eligible for election. The electors will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote in the first ballot for no more than 18 candidates.

15. If, in the first ballot, the number of candidates obtaining an absolute majority is less than 18, a second ballot will be held, and balloting will continue in the same meeting, if and as necessary, until 18 candidates have obtained an absolute majority. In any second or subsequent ballot, each elector may vote for no more than 18 candidates less the number of candidates who have already obtained absolute majorities.

16. Following the practice in the election of judges of the International Court of Justice, any second and subsequent balloting shall be unrestricted. Votes may

accordingly be cast in any second or subsequent ballot for any eligible candidate who has not yet obtained an absolute majority.

17. If, in the first ballot, more than 18 candidates obtain an absolute majority of votes, a second ballot will be held on all candidates, and balloting will continue at the same meeting, if and as necessary, until 18 candidates, and no more, obtain an absolute majority. In any such case, each elector may vote, both in the first ballot and in any subsequent ballot, for 18 candidates.

18. When 18 candidates obtain the required majority, the President of the General Assembly shall declare the candidates concerned elected.

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Memorandum by the Secretary-General

Addendum

1. By a communication received on 7 May 2003, the Permanent Mission of Panama to the United Nations informed the Secretariat that Mr. Miguel Antonio Bernal and Mr. Silvio Guerra Morales had decided to withdraw their candidatures.

2. By a communication received on 16 May 2003, the Permanent Mission of the United Republic of Tanzania to the United Nations informed the Secretariat that Ms. Engera A. Kileo, Ms. Natalia P. Kimaro and Mr. Edward Mukandara K. Rutakangwa had decided to withdraw their candidatures.

3. In consequence, the names of the following candidates should be deleted from the list of candidates for ad litem judges of the International Tribunal appearing in paragraph 7 of A/57/801:

Mr. Miguel Antonio Bernal (Panama)

Mr. Silvio Guerra Morales (Panama)

Ms. Engera A. Kileo (United Republic of Tanzania)

Ms. Natalia P. Kimaro (United Republic of Tanzania)

Mr. Edward Mukandara K. Rutakangwa (United Republic of Tanzania)

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